

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA

vs.

Criminal Number 21-312

HECTOR RODRIGUEZ

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Transcript of Sentencing held on October 3, 2023, in the
United States District Court, 700 Grant Street, Pittsburgh,
PA 15219, before the Honorable Arthur J. Schwab, United
States District Judge.

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APPEARANCES:

For the Government: U.S. Attorney's Office
by Tonya Sulia Goodman, Esq.

For the Defendant: Bahuriak Law Group
by David S. Bahuriak, Esq.

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Court Reporter: Deborah Ann Betzler, RPR, FCRR
700 Grant Street
Suite 6260
Pittsburgh, PA 15219

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Proceedings recorded by mechanical stenography;
transcript produced by computer-aided transcription.

P R O C E E D I N G S

THE COURT: Good morning.

MS. SULIA GOODMAN: Good morning, Your Honor.

THE COURT: This is the time and place that has been set for sentencing in Criminal Number 21-00312-1. I'd ask counsel for the government to enter your appearance, please.

MS. SULIA GOODMAN: Good morning, Your Honor. Tonya Sulia Goodman on behalf of the United States.

THE COURT: On behalf of the defendant?

MR. BAHURIK: Good morning, Your Honor. David Bahuriak for Mr. Rodriguez.

THE COURT: Welcome.

Sir, do you want to stand and be sworn, please.

(Defendant sworn.)

THE COURT: Sir, do you understand that having been sworn, your answers to my questions are subject to the penalties of perjury or making a false declaration if you do not answer truthfully?

THE DEFENDANT: Yes, Your Honor.

THE COURT: You may be seated and get comfortable, please.

The Court notes for the record that on March 28, 2023, pursuant to a plea agreement, defendant entered a plea of guilty to a lesser-included offense at Count 1 of the indictment charging the defendant with conspiracy, in

1 violation of Title 21, United States Code, Section 846.

2 Specifically, defendant pled guilty to conspiracy to
3 distribute and possess with intent to distribute a quantity of
4 a mixture and substance containing marijuana, a Schedule I
5 controlled substance, contrary to the provisions of
6 Title 21, United States Code, Section 841(a)(1) and
7 Section 841(b)(1)(D), in violation of Title 21, United States
8 Code, Section 846.

9 Defendant acknowledged responsibility for the conduct
10 charged at Count 2 of the indictment and agreed that such
11 conduct could be considered by the United States Probation
12 Office in calculating a guideline sentencing range and by the
13 Court in imposing sentence. Following a guilty plea, the
14 Court directed the probation office to prepare a presentence
15 investigation report and scheduled a sentencing hearing, which
16 was rescheduled for today.

17 The Court has received and reviewed the presentence
18 investigation report, addendum, and supplemental addendum
19 thereto prepared by the United States Probation Office. The
20 Court has also reviewed the parties' sentencing memoranda.
21 Defendant's sentencing memoranda included a motion for
22 downward departure or variance on behalf of the defendant, and
23 the government has filed its opposition thereto.

24 On October 2, 2023, following briefing by both parties
25 and a supplemental addendum by the probation office, the Court

1 issued tentative findings and rulings in which it denied
2 defendant's motion for a downward departure on the basis of
3 overrepresented criminal history and minimal role, which the
4 Court now adopts as final. The Court has also reviewed the
5 sentencing memorandum of both parties.

6 The Court has also reviewed several sealed documents
7 filed at Document Number 131 and 139, including character
8 letters, treatment records, a psychological evaluation, a
9 letter from the defendant to the Court, and numerous
10 questionnaires related to defendant's work as a counselor in
11 recovery support programs. Finally, the Court has reviewed
12 the sentencing recommendation prepared by the probation
13 office.

14 Sir, on March 28, 2023, you pled guilty to Count 1 of a
15 two-count indictment on a lesser-included offense of
16 conspiracy to distribute and possession with intent to
17 distribute a quantity of a mixture and substance containing
18 marijuana, a Schedule I controlled substance, contrary to
19 provisions of Title 21, United States Code, Section 841(a)(1)
20 and Section 841(b)(1)(D), in violation of Title 21, United
21 States Code, Section 846. Correct, sir?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: Following your guilty plea, I directed
24 the probation office to prepare a presentence investigation
25 report. I've reviewed said report and the addendum and

1 supplement to addendum thereto and a sentencing recommendation
2 of the probation office.

3 Pursuant to the standing order of the board of judges of
4 this district, the Court finds it's not appropriate to
5 disclose the recommendation of the probation office to the
6 parties nor to counsel. However, sir, in determining your
7 sentence, the Court will not consider any matter that's not
8 previously been disclosed to you or your attorney.

9 Counsel, have you reviewed the presentence investigation
10 report, addendum and supplemental addendum thereto, and
11 discussed them with your client?

12 MR. BAHURIAK: Yes, Your Honor.

13 THE COURT: Are there any errors in the presentence
14 investigation report, addendum, or second addendum that you've
15 not previously called to the Court's attention?

16 MR. BAHURIAK: No, Your Honor.

17 THE COURT: Sir, have you reviewed the presentence
18 investigation report, addendum and supplemental addendum
19 thereto, and other matters and discussed them with your
20 attorney?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: Counsel, is there any legal cause why
23 sentence should not be pronounced?

24 MR. BAHURIAK: No, Your Honor.

25 THE COURT: Anything else you would like to say or

1 the defendant would like to say, now would be the appropriate
2 time, please.

3 MR. BAHURIAK: Thank you, Your Honor. Your Honor, as
4 we indicated, there was a detailed presentence report in this
5 case, Judge. The case has also been amply briefed by both
6 sides, so I know the Court has a lot of information already
7 available.

8 So I don't want to go ahead and repeat everything the
9 Court already has to consider, but I would like the Court to
10 note before we begin that Mr. Rodriguez is accompanied in
11 court by his family, members of his community -- that is,
12 people who live near him -- who've known him for his entire
13 lifetime and some who have only known him through his
14 treatment efforts. He is not only involved in some drug
15 treatment, but it's pretty intense drug treatment. He's being
16 drug tested by several different agencies.

17 He also, Judge, is -- his story, I think, was so
18 compelling to those who he's been helping through a veterans
19 treatment program that he was at some point asked to speak,
20 and the Court gave him leave to participate in that program;
21 and he, in fact, has become a speaker. And in the short time
22 -- relatively short time that he's been involved as a speaker,
23 he's really touched a number of people's lives to the extent
24 that they wanted to attend today's hearing. Nobody here --

25 THE COURT: I want to thank everyone that came here.

1 I saw many of you coming into the building. I'm sure for many
2 of you it was not very convenient to get here, so I want to
3 thank you for your effort to be here today.

4 And I've read all the material that's been sent to us;
5 so, as you said, there's no need to repeat that, but I'd be
6 pleased to hear from the defendant if there's anything he
7 would like to say.

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: If you're going to read a statement, you
10 can be seated, be comfortable, and read slowly so the court
11 reporter can get down everything that you say.

12 MR. BAHURIAK: Judge, if I may -- my apologies, but I
13 know there was somebody who wanted to speak on Mr. Rodriguez's
14 behalf. I'm just not sure if you want that after or before.

15 THE COURT: I'll take it now, then.

16 MR. BAHURIAK: Thank you, Your Honor. Your Honor, I
17 have Mr. Pamfilo -- spell your last name. I'm sorry. Come to
18 the microphone, sir.

19 Would you like him up here, Judge?

20 THE COURT: Stand right there, please.

21 MR. DACUA: Last name is Dacua; D, as in David,
22 a-c-u-a, Dacua. Good morning, Your Honor. First, thank you
23 for allowing me to present to the Court to advocate on behalf
24 of Mr. Rodriguez. My name is Pamfilo Dacua, III. I am a U.S.
25 Army veteran. I am a certified recovery specialist with the

1 Veterans Multi-Service Center in Philadelphia, also a U.S.
2 Army veteran myself.

3 I have worked in public health, the compassionate care
4 field, for a very, very long time, beginning as an HIV
5 counselor and tester and a prevention specialist, moving now
6 to fighting the opioid epidemic in the city, really in our
7 country. I have 32 people on my caseload. I have encountered
8 many, many difficulties and hardships in trying to get people
9 into treatment and to help them maintain their recovery.

10 It's a very arduous journey for myself as well as for the
11 participants. I say for myself because I make a connection
12 with them; and it's heartbreaking, trying to get them into
13 treatment and seeing the barriers that they face. Once we're
14 able to breach those barriers, and help them sustain.

15 I've known Hector for a while. I ran into him, and we
16 started talking. He shared what he was doing. I took a look
17 at him, looked him square in the eyes, and I smiled because I
18 know when someone is actually internally motivated for their
19 success. After speaking with Hector for several
20 conversations, I was thoroughly convinced that he was on the
21 right path and asked him if he wouldn't mind presenting his
22 story to my group of participants.

23 One of the treatment modalities that we use is life-to-
24 life experiences, trying to help folks understand that they're
25 not special or unique just going through this process of

1 addiction, that recovery and wellness is possible. And when
2 we find men and women that are actually victorious in their
3 wellness journey, I try to grab them, get them to speak with
4 my folks. I have a couple folks here. The rest of the group
5 wanted to come, but it wasn't practical to bring the entire
6 group to support Hector in this process.

7 And working with him and watching his interaction with
8 the men and women veterans that are part of my groups, I have
9 seen the impact that he has made with them by sharing his
10 struggles. He shared with them -- not just with them -- not
11 just his successes, but his times of anxiety and trepidation
12 because he had this hanging over his head.

13 And I asked him to please share this aspect of his life
14 with them so that they can understand that here's a man that
15 has something very serious weighing on him through his own
16 fault, but he hasn't relapsed, he hasn't slipped backward, he
17 hasn't resorted back to any old negative behavior. And that
18 is a monumental change in the right direction.

19 And when our folks saw that -- I know you guys have some
20 of the extra questionnaires. Some of them are very good; you
21 know, some so-so. But the one -- after I reviewed them, the
22 one thing that I got after I spoke with the group is if he
23 could do it, facing what he's facing, that they could possibly
24 do it, as well.

25 When Hector speaks with our groups, it's a little

1 different. They get sick and tired of me because I'm with
2 them all day, every day. But it's gotten to the point now
3 where they ask, "Hey, is he coming in today?" They look
4 forward to his input; because to our group and to myself, he
5 is a winner, despite what's going on here.

6 With his maintaining his wellness and his recovery, he's
7 all in on it, and I'm happy to offer him employment, when you
8 come home -- and we talked about that before -- to continue
9 helping our folks. There's even a mechanism that's in place
10 while he's away, if he can work it out with his counselors
11 there, where he can participate via closed circuit TV or Zoom.

12 September was national recovery month. I had an event
13 planned in the building, but I had to go away for two weeks
14 for training; so that was rescheduled to, I think,
15 November 19th. It's a graduation and a commemoration of just
16 all of their hard work. Even though Hector is on the
17 periphery of the group, he's still part of our group family.
18 He's just made a world of difference with our men and women
19 veterans.

20 I put in the letter: The fact that he's not a veteran
21 and is willing to help men and women struggling, not just the
22 regular folks, but to come -- a lot of people don't want to
23 deal with our veterans because they feel that maybe we're a
24 black eye on the military because we have substance use
25 issues, mental health issues, homelessness, or it touches with

1 incarceration. No matter what, they're still human beings,
2 and they're still signed up to fight and defend this country.

3 And Hector has taken it upon himself to really get
4 engaged with our men and women, not being a veteran, but
5 wanting to be supportive of them and to show them that, "Hey,
6 listen, I didn't live a perfect life, and I have addictions
7 just like you all, but I'm beginning." He's recovering.

8 I have full faith that he will maintain his recovery, not
9 just in his addiction, but also with this criminal lifestyle.
10 I think this is all over. I think moving forward he will be
11 the model citizen. You see the support of his friends and
12 family. As I said, two of my group came. The rest of them
13 really wanted to be here, but I have a little teeny, tiny car,
14 and I couldn't get everyone in.

15 THE COURT: Thank you very much.

16 MR. DACUA: I appreciate your time, and thank you for
17 letting me speak.

18 THE COURT: Sir, thank you for your comments this
19 morning. As you can see by the flags that are on my bench, I
20 had a grandfather that was in the Spanish-American War. My
21 father's flag is also here. He was in World War II and landed
22 at Utah Beach in Normandy. And my oldest son was in Iraq as a
23 Marine for nine months. So I thank you for your service and
24 what you are doing. So thank you.

25 MR. DACUA: You're welcome, Your Honor.

1 MR. BAHURIAK: Your Honor, I'm sorry, but I was asked
2 by his daughter as a final speaker this morning, Kieran
3 Rodriguez, who came from Tennessee to speak on her dad's
4 behalf.

5 THE COURT: Certainly. Do you have any other people
6 that want to speak?

7 MR. BAHURIAK: No, Your Honor. I mean, they want to,
8 but they're not going to. I promised her I'd give her a
9 moment to speak.

10 THE COURT: Did you have any questions of the
11 gentleman who just spoke?

12 MS. SULIA GOODMAN: No questions, Your Honor.

13 THE COURT: Ma'am.

14 MS. RODRIGUEZ: Good morning, Your Honor. So as you
15 were told, my name is Kieran, and I am Hector's oldest child.

16 THE COURT: Last name is?

17 MS. RODRIGUEZ: Rodriguez. Kieran Rodriguez. I'm
18 the oldest of six. So I'm here for -- I'm speaking on behalf
19 of myself and my siblings. I want to start off by saying that
20 the change I have seen in my father over these past two years
21 has been drastic. For the first time in my life, I know that
22 he is truly remorseful for his actions and understands the
23 severity of this completely.

24 These years have opened his eyes to the fact that his
25 actions now and in the past have taken him away from the

1 people he loves and that love him dearly for too long. I am
2 so proud of him and the progress that he has made, as I have
3 seen him put effort into himself like no other time before.

4 He is in therapy; and once a week, as you heard, he
5 devotes time to veterans in tough situations. That shows my
6 father's true character, Your Honor. He is a person who gives
7 and gives and gives and never takes. He is someone that
8 everyone in this room behind me and even strangers can count
9 on.

10 My brother Liam and I grew up with him in and out of the
11 prison system. Of course, it wasn't easy. But for the past
12 several years, he has been the only -- the one and only stable
13 parent figure that we have had in our lives. My brother Liam
14 is a senior in high school. He is graduating in June; and he,
15 along with all the rest of my siblings, rely on my father
16 heavily for all basic necessities.

17 The last thing that I want as their big sister, because I
18 know how it feels to not have your dad, is for them to not be
19 home -- is for him to not be home with us. But, again, I am
20 completely aware and understand that he must face consequences
21 for his actions. Without him, I would not have graduated from
22 high school. I would not have graduated as an LPN this past
23 August. He is our rock.

24 And, of course, sir, any time away from our father is too
25 much time for us; but, like I keep saying, we are fully aware

1 that he must face consequences. So I humbly and respectfully
2 ask you to please use your best discretion and to not take our
3 father away from us for too long. All of us in this room
4 thank you greatly for your valuable time and your
5 consideration.

6 THE COURT: Thank you, ma'am.

7 Mr. Rodriguez, anything you wish to say?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: You can remain seated, be comfortable,
10 and read slowly, please.

11 THE DEFENDANT: First off, Your Honor, I want to
12 humbly apologize to Your Honor, my state, my local and federal
13 government, to the City of Pittsburgh and the County of
14 Allegheny, to my entire family for my actions and my selfish
15 decisions which have me standing in this courtroom this
16 morning. I'm ashamed of myself for my poor decisions, for my
17 shortsighted thinking as a 42-year-old man, as a 42-year-old
18 father. I'm colossally embarrassed beyond words and beyond
19 measure to be here at my own sentencing.

20 As a father of my six kids, who rely upon me for support
21 and love and encouragement, I have jeopardized each of their
22 well-beings. I make no excuses in my statement today, Your
23 Honor. Everyone has obstacles to overcome, and I let mine
24 beat me in the past.

25 But today I want to express myself and leave not a trace

1 of doubt that I accept responsibility; and for the past two
2 years, most of which I've been strictly indoors on house
3 arrest, that I reflected more deeply and sincerely than ever
4 before in my life. It has made me stronger and more focused,
5 and I am definitely changed for the better.

6 Growing up wasn't easy for me, Your Honor. I was
7 10 years old when my mother and my grandmother were arrested.
8 I had to fend for myself from that point forward. I had no
9 stability whatsoever. I needed to learn how to survive on my
10 own. My addiction controlled many aspects of my everyday
11 life, and I ended up with a full-blown opioid addiction.

12 Looking back, I see how lost I was. I've been in and out
13 of trouble with the law since I was a teenager. When I was
14 younger, I never reflected on the negative patterns of my
15 life. I let my life spiral out of control, and I made one
16 wrong decision after another. Despite all of this, I became a
17 father to my six kids. I loved them deeply, but I often
18 prioritized feeding my addiction over nurturing them.

19 I committed this crime for which I now stand before Your
20 Honor during one of my lowest points. I ignored the risks and
21 once again opted for the opportunities to make quick money to
22 support my family. I was wrong. I was wrong in so many ways
23 but not because I got caught but because what kind of example
24 was I setting? I allowed my addictions to cloud my judgment
25 and thought only of myself and my immediate needs. I failed

1 to consider how my actions would affect others.

2 I was taking shortcuts that hurt the people I love the
3 most. But again, Your Honor, it's not only about the people I
4 love. More importantly -- it's not about the people I love.
5 Everyone has people they love. And being a part of the drug
6 trade affects all of them, also.

7 I met my father seven years ago. He died the day before
8 I was arrested. He was also an addict. Seeing myself repeat
9 those same patterns as my dad, I was forced to ask myself: Do
10 I want to pass those same patterns down to my kids? Seeing
11 that pattern and finding my ability to rise above all of this
12 is why I can promise you I will never come back into the
13 courtroom. It stops here, Your Honor. I've worked very hard
14 to change. I've grown, and I'm determined to be a force for
15 good.

16 I've been in the MAT program for the last two years, and
17 I'm proud to say I've been clean the entire time. I know my
18 pattern, and staying clean is critical to becoming a positive
19 part of my community. I made the humble decision deep in my
20 heart, and I've not returned to how things were. I see
21 clearly how my addiction has hurt everyone around me.

22 I've been speaking twice a week to veterans struggling
23 from their respective addictions. I shared my story with them
24 to help them see my hard-earned truths. I know it might sound
25 corny coming from me, but working with this group makes me

1 even more grateful for the opportunities and freedoms we have
2 as Americans. Many of the men and women in the group have
3 given everything so I can have the freedom to live the life I
4 choose.

5 I've squandered my opportunities up until this point in
6 my life as a result of the poor decisions I've made. Some of
7 the lower times I've had with my family are behind me. I've
8 worked diligently through both easy and tough times. I've
9 shown my family; community; and, most importantly, myself that
10 this is a fundamental change in my person and character. I
11 have made poor decisions in my life, and I'm determined to
12 make amends and do all I can for my past misdeeds.

13 This process necessarily started by taking responsibility
14 for my past. I had begun the process of building the bridges
15 that I burnt and working on regaining the trust of my family
16 and community. I made these efforts because I am determined
17 to return as a positive member and influence on my community.

18 Once again, Your Honor, I apologize for my actions, and I
19 take full responsibility for the harm I've caused. I'm
20 committed to continuing these positive changes in my person
21 and my life. I am steadfast in my determination to never,
22 ever be before this or any other court. Thank you for your
23 time and your consideration.

24 THE COURT: Are you satisfied with the service and
25 representation provided by your attorney?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: Has he done everything you've asked him
3 to do?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: Did he do anything you believe he should
6 not have done?

7 THE DEFENDANT: No, Your Honor.

8 THE COURT: On behalf of the government?

9 MS. SULIA GOODMAN: Thank you, Your Honor. I don't
10 have much to add. The government has submitted a sentencing
11 memorandum and also a response to the defendant's request for
12 a downward departure. I will just add, Your Honor, that the
13 government's response to the motion for downward departure
14 reflected the fact that the government doesn't believe that
15 the factors cited by the defendant warranted a formal
16 departure under the United States Sentencing Guidelines.

17 The defendant has also asked for a variance, and the
18 government would just note that I think this is a truly
19 extraordinary and definitely unusual number of people that are
20 here to support the defendant today. It is not common to see
21 this many people supporting a defendant at the time of
22 sentencing.

23 I think that's certainly a factor the Court should
24 consider and can consider with respect to the defendant's
25 motion for a downward variance. It definitely takes, I think,

1 the defendant out of the -- sets the defendant apart a little
2 bit from most of the people that appear for sentencing before
3 the Court. Other than that, I have nothing further to add,
4 Your Honor. The government just requests a sentence that is
5 consistent with the goals of sentencing and with the factors
6 set forth at 3553.

7 THE COURT: Any objection to my speaking to the
8 probation officer?

9 MS. SULIA GOODMAN: Not from the government, Your
10 Honor.

11 THE COURT: Any objection?

12 MR. BAHURIAK: No, Your Honor.

13 THE COURT: Ma'am, do you want to come over here,
14 please.

15 Play some music, please, white noise.

16 (Pause in the proceedings.)

17 MR. BAHURIAK: Your Honor, if I -- sorry to interrupt
18 again, but before we move to sentencing, I just have a couple
19 of things I'd just like to say real quickly, if that's okay.

20 THE COURT: Certainly.

21 MR. BAHURIAK: Would you like that now, Judge?

22 THE COURT: Please.

23 MR. BAHURIAK: Thank you, Your Honor. Judge, with
24 respect to his supervision, his pretrial supervision, I'm
25 sure -- I have no concerns at all about any report from

1 pretrial, because this man has been a model since the day he
2 was placed on detention. But I want to point out, Judge, that
3 he was on home incarceration, not home detention but 24-hour
4 home incarceration, for 19 months.

5 Unlike nearly all of my other clients who get placed on
6 home detention -- I could probably hire a full-time person to
7 answer the phone for the people who want to get off home
8 detention and want to move to some lower supervision. But not
9 with Mr. Rodriguez. He wanted to remain on home incarceration
10 because he needed to work on his withdrawal, his addiction,
11 his issues, his mental health issues; and he got involved
12 immediately in online activities, got involved in some Zoom-
13 type virtual counseling and that sort of thing.

14 And he didn't leave the house at all, as if he were
15 incarcerated, for a period of 19 months. I just want that to
16 stand out to the Court, Judge; at least to highlight that,
17 despite the fact that those were his conditions, he complied
18 to the letter. In fact, the only reason he even asked to move
19 to home detention was because he saw an opportunity to make a
20 little bit more money to support his family. He started a
21 business while he was home. He is a very hardworking, very
22 bright young man.

23 He's been a drug addict since he was 11 years old. Never
24 stood a chance. I mean, the veteran psychologist that I had,
25 who worked for the Commonwealth of Pennsylvania for probably a

1 decade, said it's one of the worst cases of child abuse he's
2 ever seen. They have what's called an Adverse Childhood
3 Experience scale.

4 And on the scale, Judge, they talk about people who score
5 a 6 out of a 10 on the Adverse Childhood Experiences scale
6 have a 20-year lower life expectancy than people who don't.
7 They have nearly no chance of growing into adulthood without a
8 major personality disorder or substance abuse disorder.
9 That's 6 out of 10. Mr. Rodriguez scored a 9 out of 10.

10 Despite that, Judge, you heard from his daughter -- and
11 you might recognize her name, Your Honor, because one of the
12 accommodations that we asked for while he was under pretrial
13 supervision was so that he could travel to Tennessee to watch
14 her graduate from nursing school. That's the young lady who
15 just spoke. He went to her pinning ceremony. This homeless
16 kid, drug addict since he was 11, just supported a girl
17 through nursing school.

18 His next oldest -- stand up, please. This young man
19 here, Judge, is his 17-year-old son Liam. He's a senior; is
20 that right? He has a 3.9 grade point average. He wants to go
21 to college. Come, please. He has four other kids under the
22 age of 8. I just want the Court to consider, despite the
23 adversity, the positive impact that he's had on his family,
24 Judge; and those other four kids who are coming up, the
25 hardship that it would entail to them and the ability that he

1 has to do right by his kids if given the opportunity.

2 One of the things that we negotiated in this case with
3 the predecessor to counsel here was just simply agreeing to an
4 851 enhancement; the reason being, Judge, it would give the
5 Court an option for an eight-year period of post incarceration
6 supervision on supervised release. And I guess what I'm
7 asking the Court, Your Honor, is: Consider the fact that he's
8 done the home incarceration, consider the option of an
9 extended period of supervised release.

10 And I know it's a big ask, seeing where the numbers score
11 out here, Judge, but this is a man who has accepted real
12 responsibility, demonstrated by his actions. Unlike other
13 people involved in this case, Judge, he has shown, through his
14 actions, true remorse; extraordinary acceptance of
15 responsibility; and he has potential to raise a family to
16 break this cycle. He's shown that, and he can continue to
17 show that.

18 And I would ask the Court to consider a variance down to
19 a Zone C, to where he could actually serve a sentence on some
20 type of continued high-level monitoring on some kind of home
21 detention scenario, Judge, and I don't think we'll be
22 disappointed when Mr. Hector Rodriguez is done. That's all,
23 Judge. Thank you.

24 THE COURT: Thank you for your service in
25 representing him.

1 The United States sentencing guidelines are advisory
2 only. The Court has discretion to vary or deviate from the
3 guidelines after considering the relevant factors set forth in
4 Title 18, United States Code, Section 3553(a). The Court must
5 rule on any motions for departures or requests for variance.
6 Before the Court considers motions for departures or requests
7 for variance, defendant's offense level is 19; Criminal
8 History Category is VI, which is the highest Criminal History
9 Category.

10 So, accordingly, the advisory guideline range is 63 to
11 72 months imprisonment, supervised release of four years, a
12 fine of \$10,000 to \$500,000, and a special assessment of \$100.
13 Is my statement -- the high end of the guideline range is
14 78 months. So is my revised statement as to the defendant's
15 offense level, Criminal History Category, and advisory
16 guideline range correct? On behalf of the government?

17 MS. SULIA GOODMAN: Yes, Your Honor.

18 THE COURT: Defendant?

19 MR. BAHURIAK: Yes, Your Honor.

20 THE COURT: Defendant filed a motion for downward
21 departure in his sentencing memorandum on the basis of a
22 minimal role participant and overstated criminal history, both
23 of which the Court denied in its tentative findings and
24 rulings at Document Number 140 on October 2, 2023.

25 Taking into consideration the parties' arguments and the

1 facts in this case, as I will explain in greater detail in a
2 few moments, defendant's motion for downward departure has
3 been denied because the downward departure in this case would
4 not result in a sentence that is sufficient but no greater
5 than necessary to satisfy the purposes of sentencing, which
6 are just punishment, deterrence, protection of the public, and
7 rehabilitation of the defendant.

8 Defendant, alternatively, has requested a downward
9 variance from the advisory guideline sentence. As I will
10 explain in a few moments in detail, taking into consideration
11 the factors set forth in Title 18, United States Code,
12 Section 3553(a), as applied to the facts of this case,
13 defendant's request for a downward variance is granted, as the
14 Court finds a sentence within the advisory guideline range is
15 greater than necessary to satisfy the purposes of sentencing,
16 which includes just punishment, deterrence, protection of the
17 public, and rehabilitation of the defendant.

18 As to requests that the defendant wishes for me to make
19 to the Bureau of Prisons, does the defendant wish to be
20 located as close as possible to some geographical area?

21 MR. BAHURIAK: He does, Judge. My recommendations
22 would be to Allenwood, FCI Fort Dix.

23 THE COURT: Okay. So --

24 MR. BAHURIAK: Allenwood Low FCI.

25 THE COURT: He wants to be incarcerated as close as

1 possible to what city or state?

2 MR. BAHURIAK: Lancaster, PA, and Philadelphia,
3 Judge.

4 THE COURT: I ask that the Bureau of Prisons consider
5 placing the defendant as close as possible to the City of
6 Philadelphia and, in particular, to the -- what prison?

7 MR. BAHURIAK: The Allenwood Low.

8 THE COURT: Is that l-o-w?

9 MR. BAHURIAK: Yes, Your Honor.

10 THE DEFENDANT: It's A-l-l-e-n.

11 MR. BAHURIAK: Allenwood, Judge. FCI Allenwood.

12 THE COURT: And does he want any particular job
13 training, vocational training?

14 MR. BAHURIAK: Judge, he's looking for access to an
15 RDAP program and the MAT program that he continues to do now.
16 That would be M-A-T program.

17 THE COURT: My question was a different question. My
18 question was: Does he want any particular vocational
19 training? Carpentry? Construction? HVAC?

20 MR. BAHURIAK: HVAC or carpentry, Your Honor,
21 whichever is available.

22 THE COURT: Okay. So it would be a construction
23 trade, in particular carpentry or HVAC.

24 Any objection to the recommendation as to the RDAP
25 program?

1 MS. SULIA GOODMAN: No objection, Your Honor.

2 THE COURT: That's three requests. Any other
3 requests that I make recommendations about?

4 MR. BAHURIAK: Just the recommendation for the MAT
5 program, Your Honor, which would be a drug treatment program.

6 THE COURT: And that's different than RDAP?

7 MR. BAHURIAK: I believe so, Your Honor. It's
8 something he's involved with now, and I believe he has access
9 through the Bureau of Prisons.

10 THE COURT: I'm saying the RDAP program or the MAT
11 program.

12 MR. BAHURIAK: Both, Your Honor, if possible.

13 THE COURT: And/or. You can put and/or.

14 MR. BAHURIAK: Thank you, Your Honor.

15 THE DEPUTY CLERK: Is that MAT, M-A-T?

16 MR. BAHURIAK: M-A-T.

17 THE COURT: As in Tom?

18 MR. BAHURIAK: Yes, Your Honor, as in tango.

19 THE COURT: Any objection to the defendant being --
20 to self report?

21 MS. SULIA GOODMAN: No, Your Honor. I've spoken with
22 the probation office this morning. The defendant has been
23 compliant with all conditions of release for, you know, two
24 years now. The government doesn't have any reason to believe
25 that at this point he poses a danger to the safety of the

1 community or a flight risk.

2 THE COURT: Sir, your sentence is as follows.
3 Pursuant to the Sentencing Reform Act of 1984, it is the
4 judgment of the Court the defendant be sentenced to 48 months
5 imprisonment, followed by four years of supervised release.
6 Within 72 hours of release from the Bureau of Prisons,
7 defendant shall report in person to the probation office in
8 the district to which the defendant is released.

9 While on supervised release, defendant shall not commit
10 another federal, state, or local crime; shall comply with the
11 standard conditions that have been adopted by the Court; and
12 shall comply with the following additional conditions. One,
13 defendant shall not illegally possess a controlled substance.
14 Supervised release must be revoked for possession of a
15 controlled substance.

16 Two, defendant shall not possess a firearm, ammunition,
17 destructive device, or any other dangerous weapon. Supervised
18 release must be revoked for possession of a firearm,
19 ammunition, destructive device, or other dangerous weapon.
20 Three, defendant shall participate in a program of testing
21 and, if necessary, treatment for substance abuse, said program
22 approved by the probation officer until such time as defendant
23 is released from the program by the probation officer and/or
24 the Court.

25 Defendant shall be required to contribute to the cost of

1 the services for any such treatment in an amount to be
2 determined by the probation officer but not to exceed actual
3 costs. The defendant shall submit to one drug urinalysis
4 within 15 days after being placed on supervision and at least
5 two periodic tests thereafter.

6 Four, defendant shall not purchase, possess, and/or use
7 any substance or device designed to alter in any way or
8 substitute defendant's urine specimen for drug testing. In
9 addition, defendant shall not purchase, possess, and/or use
10 any device designed to be used for the submission of a
11 third-party urine specimen.

12 Five, defendant shall submit his person, property, house,
13 residence, vehicle, papers, business, or place of employment
14 to a search conducted by a United States probation officer at
15 a reasonable time, in a reasonable manner, based on a
16 reasonable suspicion of contraband or evidence of a violation
17 of a condition of supervision. Failure to submit to a search
18 may be grounds for revocation. Defendant shall inform any
19 other residents that the premises may be subject to searches
20 pursuant to this condition.

21 Six, defendant is prohibited from incurring any new
22 credit card or opening any additional lines of credit without
23 prior written approval of the probation officer. Seven,
24 defendant shall provide the probation officer with access to
25 any requested financial information.

1 Eight, defendant shall pay a fine in the amount of \$1,500
2 to the Clerk of Court, Attention Finance Department, 700 Grant
3 Street, Suite 3110, Pittsburgh, Pennsylvania 15219.
4 Defendant shall make payments to satisfy this criminal
5 monetary penalty in the following manner: A, monthly payments
6 of \$100 or 5 percent of defendant's gross monthly income,
7 whichever is greater.

8 B, the first payment being made within 30 days following
9 defendant's discharge from incarceration and continue until
10 the criminal monetary penalty is paid in full. And, C,
11 defendant shall be responsible for providing proof of payment
12 to the probation officer as directed.

13 Nine, defendant shall cooperate in the collection of DNA
14 as directed by the probation officer. The Court also imposes
15 a mandatory special assessment of \$100, constituting \$100
16 special assessment at each count to which defendant has pled
17 guilty, which shall be paid to the Clerk of Court forthwith.

18 Sir, the reason for your sentence is as follows: I have
19 granted you a variance from the recommended guideline range,
20 in part because of your statement and the statements made by
21 your family members and other support, statements that have
22 been made and filed in this case. I take your statement as
23 being sincere. Your request for a noncustodial sentence or a
24 sentence below 48 months, however, is a bridge too far in
25 light of the serious criminal activity you engaged in.

1 The Court considers the sentence of 48 months
2 imprisonment and four years supervised release and the fine to
3 be sufficient but no greater than necessary to comply with the
4 goals of sentencing as set forth in Title 18, United States
5 Code, Section 3553(a)(2), which are to reflect the seriousness
6 of the offense, to promote respect for the law and provide for
7 just punishment for the offense, to afford adequate deterrence
8 to criminal conduct, protect the public from further crimes by
9 this defendant, and to provide the defendant with needed
10 educational or vocational training, medical care, or other
11 correctional treatment in the most effective manner.

12 The Court has considered all the sentencing factors set
13 forth in Title 18, United States Code, Section 3553(a),
14 including those presented by the defendant and the government
15 and as set forth in the presentence investigation report and
16 the addendum and supplemental addendum thereto.

17 The defendant seeks a sentence of house arrest and has
18 consistently maintained his opinion that the sentence of
19 imprisonment is not appropriate based on his rehabilitation
20 and community service, among other things. However, as the
21 Court said, that would not provide for just punishment for the
22 seriousness of his offenses.

23 The Court has also considered, first, the nature and
24 circumstances of the offense as set forth in Paragraphs 1
25 through 21 of the presentence investigation report, which the

1 Court incorporates by reference. The defendant has pled
2 guilty to a lesser-included offense for his role in the
3 conspiracy and is responsible for 80 to 100 kilograms of
4 marijuana, a Schedule I controlled substance.

5 Defendant was identified as the source of supply of
6 marijuana for codefendant Muessig, M-u-e-s-s-i-g, who, in
7 turn, was a source of supply of marijuana for the SCO drug
8 trafficking gang operated in the Braddock, Pennsylvania,
9 community. In May of 2019, defendant traveled to Pittsburgh
10 and met with Muessig for the purpose of trafficking marijuana.
11 In its tentative findings and rulings, the Court has declined
12 to agree with defendant that his role was minimal in this
13 criminal enterprise.

14 Two, the Court has considered defendant's personal
15 characteristics, family, criminal, and social history as set
16 forth in the PSR in Paragraphs 31 through 71, which are
17 incorporated by reference in my statement of reasons.
18 Defendant is 42 years old, grew up in an extremely unstable
19 environment.

20 As defense counsel accurately pointed out, both his
21 parents were heavy drug users; and defendant and siblings and
22 mother were living in grandmother's residence with very little
23 parental or financial support until both his mother and
24 grandmother were arrested for drug distribution offenses when
25 the defendant was approximately 10 years old.

1 Defendant left school at the time, and his own admission
2 was he was on the street. His older sister, who was close
3 family support, obtained legal guardianship of the defendant
4 when he was approximately 13 years old. He's resided in
5 Philadelphia since the age of 16.

6 He has six children, several of which, if not all, are
7 here today, and we've heard from them. He does have his GED
8 and, it's reported, has a large number of assets that are
9 summarized in the presentence investigation report, which
10 is one of the reasons why I've ordered a fine, a modest fine
11 of \$1,500.

12 As I've said and as defense counsel has pointed out in
13 detail, defendant has had a long -- significant lifetime
14 history of drug addiction and abuse. I appreciate the
15 statement made by the gentleman relating to the service on
16 behalf of veterans, and I have recommended that the defendant
17 participate in the 500-hour comprehensive RDAP program for
18 drug treatment.

19 Third, the Court has considered the kinds of sentences
20 available for these offenses and the sentencing guideline
21 range under the advisory guidelines and applicable policy
22 statements adopted by the Sentencing Commission. And, fourth
23 and finally, the Court has considered the need to avoid
24 unwarranted sentencing disparities among defendants with
25 similar records who have been found guilty of similar conduct.

1 The Court notes that his codefendant was sentenced to
2 60 months imprisonment despite the fact that the codefendant
3 had a Criminal History Category I, whereas defendant has the
4 highest possible Criminal History Category of VI. But I
5 believe that the variance that I've pronounced is appropriate
6 in light of the defendant's statement and the statements made
7 by others here in public today and in the documents that I've
8 received.

9 On behalf of the government, does my statement of reasons
10 adequately address all objections, concerns, and issues
11 raised?

12 MS. SULIA GOODMAN: It does, Your Honor.

13 THE COURT: Are there any other sentencing factors
14 under Section 3553(a) that the Court has failed to address?

15 MS. SULIA GOODMAN: No, Your Honor.

16 THE COURT: On behalf of the defendant, has my
17 statement of reasons adequately addressed all objections,
18 concerns, and issues raised?

19 MR. BAHURIAK: Yes, Your Honor.

20 THE COURT: Are there any other sentencing factors
21 under Section 3553(a) that the Court has failed to address?

22 MR. BAHURIAK: No, Your Honor.

23 THE COURT: Have you spoke to your client about his
24 right to appeal?

25 MR. BAHURIAK: Yes, Your Honor.

1 THE COURT: Sir, you have the right to appeal, except
2 as otherwise waived in the plea agreement, from the orders of
3 this Court, the judgment of guilty, and/or from the sentence
4 imposed. You have the right to have a lawyer represent you on
5 appeal at no cost to you. If you cannot afford them,
6 certified copies of the necessary records and transcripts will
7 be furnished at the expense of the United States government.

8 If you appeal, any Notice of Appeal must be filed within
9 14 days of today. Otherwise, you will lose your right to
10 appeal. If you request, the Clerk of Court will immediately
11 prepare and file a Notice of Appeal on your behalf. Do you
12 wish to appeal, sir?

13 THE DEFENDANT: No, Your Honor.

14 THE COURT: Do you understand if you change your mind
15 and decide to appeal, any Notice of Appeal must be filed
16 within 14 days of today? Otherwise, you will lose your right
17 to appeal.

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: And if you change your mind and decide to
20 appeal, you'll use your current counsel for any such appeal,
21 correct?

22 THE DEFENDANT: Correct. Yes, Your Honor.

23 THE COURT: Defendant is not in custody. The
24 position of the Assistant U.S. Attorney is that it would be
25 proper for the defendant to voluntarily surrender. Thus,

1 pursuant to Title 18, United States Code, Section 3143(a) and
2 3145(c), the Court finds by clear and convincing evidence,
3 including defendant's compliance throughout the term of his
4 pretrial release, that the defendant is not a flight risk
5 based on his ties to the community; because of his lack of
6 violent criminal history, he's not a danger to any other
7 person or the community; and that there are acceptable
8 circumstances.

9 Therefore, the Court orders that the defendant shall
10 voluntarily surrender to the institution designated by the
11 Bureau of Prisons as notified by the United States Marshals
12 Service but no later than the 4th day of October, 2023. Up to
13 and including that date, the defendant shall remain subject to
14 all of the previous conditions that have been set by United
15 States Magistrate Judge Lenihan and this Court as part of his
16 pretrial release.

17 It is therefore ordered that the existing order for
18 release remains in effect, subject to the standard conditions
19 of release as set forth in the order setting conditions of
20 release and the following additional conditions. One, if
21 defendant has a passport, within ten days defendant shall
22 surrender --

23 MR. BAHURIAK: I'm sorry, Your Honor. I believe the
24 Court said a surrender date of October 4th, which would be
25 tomorrow. Maybe I heard it wrong, Judge. We were asking for

1 a 90-day surrender date, with all due respect, Your Honor.

2 THE COURT: I'll grant him 60 days to report, and the
3 report date will be on or before December 4, 2023.

4 MR. BAHURIAK: Thank you, Your Honor.

5 THE COURT: I'll start again on the conditions. One,
6 if defendant has a passport, within ten days defendant shall
7 surrender said passport as directed by the probation office,
8 which shall hold such passport until the term of his
9 supervised release is complete. Two, the defendant shall not
10 depart from the Eastern District of Pennsylvania. Three, the
11 defendant shall refrain from possession of a firearm,
12 destructive device, or other dangerous weapon.

13 Four, the defendant shall refrain from excess use of
14 alcohol. Five, the defendant shall refrain from the use and
15 unlawful possession of a narcotic drug unless prescribed by a
16 licensed medical practitioner. Six, the defendant shall
17 submit to any method of testing required by the pretrial
18 service office for determining whether the defendant is using
19 a prohibited substance. Seven, the defendant shall
20 participate in a program of inpatient or outpatient substance
21 abuse therapy and counseling if deemed advisable by the
22 pretrial service office.

23 Eight, the defendant shall refrain from obstruction in
24 any fashion of the efficiency and accuracy of any prohibited
25 substance testing, and defendant shall not purchase or possess

1 any device to provide for the use of a third-party urine
2 specimen. Nine, the defendant shall report as soon as
3 possible to the pretrial service office any contact with any
4 law enforcement personnel, including but not limited to any
5 arrest, question, or traffic stop. You understand, sir?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: Do you also understand that you must
8 report as notified by the United States Marshals Service but
9 no later than the 4th day of December, 2023, or you will be
10 guilty of violating the Bail Reform Act, which carries a
11 maximum sentence of ten years imprisonment consecutive to any
12 other sentence I have imposed, a fine of \$250,000, and could
13 result in the forfeiture of any bond posted? You understand,
14 sir?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: Do you have a count to dismiss?

17 MS. SULIA GOODMAN: Yes, Your Honor. At this time,
18 consistent with the terms of the plea agreement, the
19 government would move to dismiss Count 2 of the indictment as
20 to the defendant Hector Rodriguez.

21 THE COURT: Any objection?

22 MR. BAHURIAK: No, Your Honor.

23 THE COURT: So granted. Anything else on behalf of
24 the government?

25 MS. SULIA GOODMAN: Nothing further, Your Honor.

1 THE COURT: Anything else on behalf of the defendant?

2 MR. BAHURIAK: Your Honor, I'm not sure if this is
3 the appropriate time, but I made some motions to seal the
4 documents that I had submitted on behalf of Mr. Rodriguez. I
5 would just move to unseal those documents. If I need to do
6 that here or if I can just submit something to --

7 THE COURT: I think we need something in writing so
8 there will be no doubt as to your request.

9 MR. BAHURIAK: Thank you, Your Honor.

10 THE COURT: Anything else you want to say?

11 MR. BAHURIAK: No, sir. Thank you.

12 THE COURT: I want to thank everybody that was here
13 today and for your statements on behalf of your father and
14 statements on behalf of his service to the veterans. I know a
15 lot of you had to travel a substantial distance to be here, so
16 I want you to know that I appreciate your being here. And I
17 appreciate the defendant's statement. I know that you wanted
18 him home sooner than what I've ordered, but there has to be
19 consequences for his activity, and so I hope you understand my
20 decision in that regard.

21 I adjourn this hearing. I would appreciate if you exit,
22 because I have another sentencing that I'm a little behind on.
23 So if you would kindly exit at your convenience, I would
24 appreciate it.

25 (The above-captioned matter was concluded.)

C E R T I F I C A T E

I, DEBORAH ANN BETZLER, RPR, FCRR, certify that
the foregoing is a correct transcript from the record of
proceedings in the above-entitled case.

s\ Deborah Ann Betzler
DEBORAH ANN BETZLER, RPR, FCRR
Official Court Reporter

10/19/2023
Date of Certification